IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 1043 of 2002(A)

OPMV.1061/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT: 3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
KOTHAMANGALAM REPRESENTED BY
ASSISTANT MANAGER, REGIONAL OFFICE,
ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/RESPONDENTS 1 & 2:
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1. KURIAKOSE, S/O. SKARIAH, AGED 43 YEARS,
RESIDING AT THUDUMBEL HOUSE,
CHELADU P.O., KOTHAMANGALAM.

2. M.K. ELDHOSE, S/O. KURIAKOSE,
MUTHIRAKKALAYIL HOUSE,
VENGOLA P.O., PERUMBAVOOR.

3. P.J. ELDHO, PERUMBUMKUDY HOUSE,
KOTHAMANGALAM.

BY ADV. SRI.ALEXANDER JOSEPH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007 THE COURT ON DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A No. 1043 of 2002

Dated this the 7th day of August 2007

JUDGMENT

The insurer in O.P (MV) on the file of the Motor Acidents Claims Tribunal Moovattupuzha is the appellant. The appeal is filed against an award passed by the Tribunal awarding an amount of Rs. 20,660/- as compensation. The 1st respondent filed an original petition claiming compensation alleging that at about 7.30 p.m. on 5-7-1999 he sustained injuries in a motor vehicle accident involving a scooter bearing registration No. KL-7/A 9317. He was taken to the hospital and treated. The 1st respondent claimed a compensation of Rs.75,000/- The owner and driver of the offending vehicle did not contest. The appellant alone contested. The appellant filed a petition under section 170 of the Motor Vehicles Act seeking permission to contest the matter on merits. The appellant contended that there is no negligence on the part of the 2nd respondent- rider of the scooter. It was also contended that the vehicle was covered with a policy which was an 'act only policy" and as such the insurer is not liable to indemnify the insured. The Tribunal allowed the petition filed by the appellant to contest the matter on merits. The doctor alone was examined as PW1. Ext.A1 to A7 were proved and marked. The Tribunal found that the accident occurred due to the negligence of the 2nd respondent- rider of the scooter and the applicant was entitled to get 20,660/- as compensation. The appellant was directed to pay the compensation. Challenging that award this appeal is filed.

2. The learned counsel appearing for the appellant strenuously argued before me that it is a case in which the appellant disputed the very accident itself. It is argued that the 1st respondent/petitioner in the O.P did not adduce any evidence to prove the accident. The wound certificate produced by the 1st respondent shows that he was found lying in the road at Thrikkalathoor. He was taken to the hospital by one Ajas . The cause of injury noted was multiple abrasion over the left side of forehead, left shoulder, both hands and left knee. It is true that an FIR was registered on 8-9-1999 stating that the accident occurred due to rash or negligent riding of the scooter by the nephew of the 1st respondent. Since the appellant had disputed the very accident, the 1st respondent ought to have adduced evidence to prove the accident. The 1st respondent did not enter the box and gave evidence. So there is no evidience to prove the accident alleged But considering all aspects of the matter it is just and proper that one more opportunity is given to the 1st respondent to prove the accident and the negligence. For that purpose the case has to go back.

3. In the result the M.F.A. is allowed The award passed by the Tribunal is hereby set aside. The case is remanded. The Tribunal is directed to take O.P.(MV) 1061/1999 back to file and dispose of the same afresh in accordance with law after giving opportunity to both sides to adduce evidence. The parties shall appear before the Tribunal on 25-9-2007.

K.PADMANABHAN NAIR,JUDGE

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